

PROGRAM CHARTER FOR

PROTECTED SPECIES

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1. EXECUTIVE SUMMARY

The National Oceanic and Atmospheric Administration's (NOAA) Protected Species Program (PSP) is responsible for the conservation of certain species listed under the Endangered Species Act (ESA), Marine Mammal Protection Act (MMPA), and other statutes and international treaties and conventions. Protected species are defined as marine mammal stocks, and marine and anadromous species listed as threatened or endangered under the ESA. While other NOAA programs contribute to the implementation of these mandates, PSP is the only program in NOAA whose sole purpose is the implementation of these mandates and the protection and recovery of marine species and their habitats protected under these mandates. Outside of NOAA, PSP shares this responsibility with the Department of the Interior's Fish and Wildlife Service. PSP is a non-matrix program and is housed fully within the National Marine Fisheries Service (NOAA Fisheries) and NOAA's Ecosystem Goal PSP implements three main capabilities: pursuing proactive conservation efforts, formal listing of the species in need of protection, and recovery and conservation of protected species. Proactive conservation efforts are aimed at helping species that are approaching the need for listing under the ESA. Species in this category have been named "species of concern" and sometimes "candidate species". Once a species has become threatened or endangered under the ESA, the PSP is responsible for formal listing of the species and designation of critical habitat under the ESA and designating marine mammals as strategic stocks or as depleted under the MMPA. The majority of the program's work is on conservation and recovery of protected species. This involves management and planning to remove or minimize human impacts and provide for population increase to functional levels, much of it in concert with federal, state, tribal, local, international and private partners. PSP also coordinates Outreach and Education, and International activities related to protected species. These activities cut across all parts of the program from proactive efforts to recovery. PSP works closely with the Ecosystem Research and Ecosystem Observations programs to support the science requirements of the PSP.

Protected Species information can be found at <http://www.nmfs.noaa.gov/pr>

2. PROGRAM REQUIREMENTS

A. Primary Requirement Drivers

- The Endangered Species Act (ESA) of 1973 – requires NOAA and PSP to take various actions to protect and recover all threatened and endangered species under the jurisdiction of the Department of Commerce.

- The Marine Mammal Protection Act (MMPA) of 1972 – requires NOAA and PSP to take various actions to protect all marine mammals under the jurisdiction of the Department of Commerce
- National Environmental Policy Act – requires NOAA and PSP to evaluate the effects of protected species recovery and conservation actions on the environment.
- The US Ocean Action Plan – requires NOAA and PSP to improve protected species bycatch reduction, increase international sea turtle conservation and advance ocean stewardship through cooperative conservation.

B. Mission Requirement

All of the above mentioned requirement drivers support the mission requirement to *protect and recover all protected species to fully functioning elements of their ecosystems*. All activities undertaken within the program are designed to achieve this mission requirement. Both the ESA and MMPA contain prescriptive mandates on how to achieve this mission requirement. A more detailed listing of mission requirements is included as Appendix A. The Protected Species Program works within these prescriptive mandates to implement these statutes through an Ecosystem Approach to Management.

3. LINKS TO THE NOAA STRATEGIC PLAN

The PSP was created with the single focus of supporting the Ecosystem Mission Goal to “Protect, restore, and manage the use of coastal and ocean resources through an ecosystem approach to management” through the implementation of the ESA and MMPA.

A. Ecosystem Goal Outcomes: The PSP contributes to both Ecosystem Goal Outcomes:

- *Healthy and productive coastal and marine ecosystems that benefit society*
- *A well-informed public that acts as a steward of coastal and marine ecosystems.*

B. Ecosystem Goal Performance Objectives: The PSP contributes to four of the Ecosystem Goal Performance Objectives:

Increase number of protected species that reach stable or increasing population levels.

- Increase number of habitat acres conserved or restored.
- Increase portion of population that is knowledgeable of and acting as stewards for coastal and marine ecosystems.
- Increase number of coastal communities incorporating ecosystem and sustainable development principles into planning and management.

C. Ecosystem Goal Strategies: The PSP contributes to four of the Ecosystem Goal Strategies:

- Engage and collaborate with our partners to achieve regional objectives by delineating regional ecosystems, promoting partnerships at the ecosystem level, and implementing cooperative strategies to improve regional ecosystem health.
- Manage uses of ecosystems by applying scientifically sound observations, assessments, and research findings to ensure the sustainable use of resources and to balance competing uses of coastal and marine ecosystems.
- Develop coordinated regional and national outreach and education efforts to improve public understanding and involvement in stewardship of coastal and marine ecosystems.
- Engage in technological and scientific exchange with our domestic and international partners to protect, restore, and manage marine resources within and beyond the Nation's borders.

4. LONG TERM PROGRAM OUTCOMES

1. Recovery (and maintenance) of all protected species to fully functioning elements of their ecosystems
2. Improved or maintained protected species status including abundance, distribution, productivity, and diversity

5. PROGRAM ROLES AND RESPONSIBILITIES.

This program is established and managed with the procedures established in the NOAA Business Operations Manual (BOM). Responsibilities of the Program Manager are described in the BOM. Responsibilities of other major participants are summarized below:

A. Participating Line Offices, Staff Offices, and Council Responsibilities:

1. National Marine Fisheries Service (NMFS) is responsible for the coordination and administration of NOAA's contribution to protected species management and science activities. NMFS provides assistance with annual budget formulation and execution, Annual Operating Plan development, and other related information. Within NMFS, 12 regional offices and science centers, as well as the Office of Protected Resources plan, budget and execute the Protected Species program.
2. NOAA Office of General Counsel is responsible for legal review of protected species management actions under the ESA and MMPA such as listing decisions, critical habitat designations, recovery plans, take reduction plans, agreements with states, tribes and Alaska natives, biological opinions assessing risk of proposed Federal agency actions, scientific research permits, habitat conservation plans/incidental take permits and authorizations, and

the issuance of protective regulations. They participate in the negotiation, revision and implementation of international treaties, provide legal advice, and help defend the program in litigation.

3. NOAA Oceans Council is responsible for coordinating ocean activities across NOAA; proposing priorities and investment strategies for ocean-related initiatives; identifying ocean and coastal programs that might benefit most from integration; and coordinating NOAA's participation in the interagency National Oceanographic Partnership Program (NOPP). The NOC is also authorized to develop a strategy and serve as the agency focal point for responding to and implementing the recommendations of the President's Ocean Action Plan and recommendations of the U.S. Commission on Ocean Policy.

4. NOAA International Affairs Council serves as the focal point for international policy, activities, and important crosscutting topical areas. Through this Council, NOAA's international affairs are managed using matrix management principles to ensure coordination, cooperation, and communication on international activities, and to enhance the visibility of NOAA's international activities and accomplishments. The Protected Species program coordinates with the International Affairs Council when pursuing important international activities such as the International Whaling Commission, Convention on International Trade in Endangered Species, and international marine turtle conservation.

5. NOAA Education Council serves as a forum in NOAA for the discussion of ideas and proposals for NOAA-wide education and outreach activities and priorities and makes recommendations to NOAA management on all aspects of NOAA's educational activities. The Protected Species program utilizes this forum to advance educational and outreach opportunities for protected species.

B. External Agency/Organization Responsibilities

1. Department of the Interior (DOI) – U.S. Fish and Wildlife Service (FWS) - is responsible for the conservation of terrestrial, freshwater, and some anadromous species listed under the Endangered Species Act, as well as some species under the jurisdiction of the Marine Mammal Protection Act (manatees, dugongs walruses, polar bears, sea otters). They have all of the same responsibilities for these species (proactive consultation, listing, consultation and recovery), as NMFS does for marine and most anadromous species. In addition, the FWS Wildlife Refuge System and the DOI National Park Service provide for conservation of certain marine and anadromous species in specific areas, as does the National Ocean Service's National Marine Sanctuary Program..

2. The DOI – Bureau of Indian Affairs is the lead for many Federal trust responsibilities to American Indian tribes, which often involve protected species, including treaty responsibilities and native subsistence issues.

3. All Other Federal Agencies – under ESA section 7(a), all federal agencies are required to utilize their authorities in furtherance of the purposes of the ESA and they must consult with NMFS on any action they authorize, fund, or carry out to ensure that the action does not jeopardize ESA listed species or destroy or adversely modify critical habitat designated for ESA listed species. The primary Federal agencies that consult with PSP include the

Department of Defense (Navy, Corps of Engineers), Department of the Interior (Minerals Management Service, Bureau of Land Management), Department of Transportation, Department of Agriculture (U.S. Forest Service, Natural Resource Conservation Service), and the Environmental Protection Agency.

6. END USERS OR BENEFICIARIES OF PROGRAM:

1. NOAA: A successful Protected Species Program will provide the management decision support for NOAA to meet its mandates under the ESA, MMPA and other relevant statutes related to protected species.

NMFS – PSP provides expert advice and consultation services for the Fisheries Management and Habitat programs. These programs carry out actions that may affect protected species and therefore must undergo consultation under the ESA and be permitted under the MMPA. PSP works through the regulatory streamlining program to ensure that effects on protected species are considered in the initial stages of the fishery management planning process to avoid unnecessary delays.

National Marine Sanctuary Program (NMSP) – PSP maintains a close working relationship with the NMSP to better implement protected species conservation and management actions within Sanctuary boundaries. This collaboration will allow PSP to leverage additional resources for conservation and management and outreach and education activities targeted at those protected species that inhabit Sanctuary waters.

2. Other Federal agencies - All federal agencies rely on PSP to provide expert advice and permitting and consultation services for protected species. Under ESA section 7(a), all federal agencies are required to utilize their authorities in furtherance of the purposes of the ESA and they must consult with NMFS on any action they authorize, fund, or carry out to ensure that the action does not jeopardize ESA listed species or destroy or adversely modify critical habitat designated for ESA listed species. The primary Federal agencies that consult with PSP include the Department of Defense (Navy, Corps of Engineers), Department of the Interior (Minerals Management Service, Bureau of Land Management), Department of Transportation, Department of Agriculture (U.S. Forest Service, Natural Resource Conservation Service), and the Environmental Protection Agency.

3. Non-Federal stakeholders:

States – NMFS works closely with State governments to coordinate recovery and conservation actions for all protected species. States are important partners in “on-the-ground” conservation actions (such as managing state fisheries to minimize bycatch of protected resources, managing habitat to benefit species, and conducting surveys and monitoring programs), as well as planning efforts such as development of recovery plans, and outreach to the public at large. Working with NMFS on these efforts assists them in effectively and efficiently meeting their mandates to conserve their natural heritage. Currently, eight states and two territories have Cooperative Agreements with NMFS to manage for the species in their states per section 6 of the ESA. These agreements make

states eligible for funding for conservation activities. States also benefit through other grants programs both directly – by receiving grants funding – and indirectly, by achieving greater protection of species in their states. In addition, direct Congressional appropriations for states are often appropriated through NMFS, such as the Pacific Coast Salmon Recovery Fund, and research funds for specific species.

Tribes/Alaska Native Organizations - NMFS and Alaska Native Organizations (ANOs) have developed co-management agreements to better manage those stocks of marine mammals that are used for subsistence purposes. The agreements result in a shared responsibility with our native co-partners for marine mammal conservation and management. NMFS also distributes grant funds to Pacific Coastal and Columbia River Tribes for purposes of salmon conservation through the Pacific Coastal Salmon Recovery Fund. These grants are designed to build capacity for salmon recovery at the tribal level.

Non-Governmental Organizations (NGOs) - Many environmental NGOs are actively engaged in living marine resource issues, especially maintaining healthy coastal and marine ecosystems and restoring and maintaining healthy populations of protected species. These organizations closely track the activities of the PSP including the core responsibilities of proactive conservation efforts, formal listing, and recovery and conservation of protected species. These organizations strongly support PSP scientific research initiatives necessary to better manage protected species and the use of the best available science. In addition, the PSP sometimes partners with NGOs to coordinate outreach and education, and international activities related to protected species.

Industry – The implementation of successful, science based conservation and management programs will ensure the availability of living marine resources and habitats for the benefit of society and of future generations. These programs will also avoid costly use restrictions and prohibitions necessary for the recovery of depleted living marine resources and restoration of ocean and coastal habitats. Many industrial sectors, including construction, oil and gas, fishing, shipping, and tourism, are affected or influenced by PSP programs. Within the framework of our legislative and legal mandates, PSP strives to use a balanced approach that provides effective conservation of protected species while balancing the needs of coastal and ocean industries to maximize societal benefits.

International - PSP works with foreign governments and international organizations, like the WorldFish Center and the Food and Agriculture Organization, to increase the capacity of foreign governments to manage and protect marine resources. In addition, PSP supports international research on protected species, as well as habitat conservation. Through these efforts, PSP increases the ability of our international partners to take similar conservation measures as the United States. This improves the likelihood of species recovery as well as strengthening conservation efforts of foreign countries.

Appendix A. Requirement drivers and related mission requirements of the Protected Species Program

LEGAL MANDATES:

The cornerstone legislation, or requirement drivers, for the PSP are the ESA and MMPA. All other legal mandates, treaties/conventions and policies are secondary to these two powerful statutes. These statutes were written specifically for protected species management.

Furthermore, because of the extent of the prescriptive mandates of these two statutes (“the Secretary shall...” precedes requirements in almost every section), it is important they are described in more detail than the other requirements drivers to gain appreciation for the force of their impact driving program activities. A detailed description of the requirements of the ESA and MMPA follows the narrative description of all the requirement drivers.

Endangered Species Act of 1973

The primary purpose of the ESA is to “provide a means whereby the ecosystems upon which endangered species and threatened species may be conserved”, to provide a program for the conservation of such species, and to provide for actions necessary to achieve the purposes of the treaties and conventions set forth in the ESA. The ESA requires federal government agencies to work together through specific consultative procedures to insure that any activity they permit, fund, or carry out does not lead to further extinctions and also instructs them to promote recovery of the listed species. The ESA requires the Secretary to formally list threatened or endangered species, develop and implement recovery plans, consult on federal action that may affect listed species or critical habitat, develop cooperative conservation programs with the states, and actively pursue international efforts to conserve listed species. The ESA also requires the Secretary to conduct periodic species status reviews, to provide for enforcement of the take prohibitions, and to issue authorizations for take under certain conditions to non-federal entities (federal authorizations are handled through the consultation process) either for scientific research activities, or during the course of otherwise lawful activities.

Marine Mammal Protection Act of 1972, as amended

Enacted in 1972, the MMPA (Title I) prohibits the taking (defined as harass, hunt, capture, or kill, or attempt to harass, hunt, capture, or kill any marine mammal) or importing of marine mammals, regardless of their status. The MMPA also provides for specific exceptions to this comprehensive moratorium, such as takings that occur incidental to fishing and other lawful activities and takes for the purpose of scientific research, public display and enhancement. In addition, NMFS is authorized to waive the moratorium for certain activities but such a waiver entails a complex formal procedure.

The MMPA is administered jointly by NMFS and the U.S. Fish and Wildlife Service (FWS). FWS is responsible for programs related to manatees, dugongs, sea otters, walrus, and polar bears. NMFS is responsible for programs related to all other marine mammals.

The MMPA requires NMFS to determine, in consultation with the Marine Mammal Commission, when stocks of marine mammals are depleted and to develop conservation plans for depleted stocks of marine mammal to promote their recovery to optimum

sustainable population limits. The MMPA also requires NMFS to prepare stock assessment reports for all stocks of marine mammals in waters under US jurisdiction and to review these reports annually for some stocks or every three years for others. If the results of the review indicate that stocks have changed status or can be determined with improved accuracy, NMFS must issue revised stock assessment reports through notice-and-comment procedures.

In recognition of the valuable services performed by volunteer stranding networks, Congress amended the MMPA (Title IV) to establish the marine mammal health and stranding response program. The MMPA includes provisions related to data collection and dissemination, developing stranding response agreements, and a program to support the response to unusual mortality events. The MMPA also contains requirements for NMFS to develop standards and guidance for collecting and archiving marine mammal tissues to be used for future research and a grants program to support organizations participating in the volunteer stranding network.

National Environmental Policy Act (NEPA)

NEPA requires that the effects of major Federal activities on the human environment be assessed. Federal officials must weigh and give appropriate consideration to environmental values in policy formulation, decision making, and administrative action. The public must be provided adequate opportunity to review and comment on the major federal actions. NEPA requires preparation of an Environmental Impact Statement for major Federal actions that significantly affect the quality of the human environment before a decision is made. PSP must prepare an environmental impact statement or environmental assessment for most protective regulations, most permitting activities and most grant programs.

Whaling Convention Act of 1949 (WCA)

Under the Whaling Convention Act the Secretary of Commerce implements the provisions of the International Convention for the Regulation of Whaling. These duties require the Secretary to enforce the moratorium on commercial whaling, the sale and transport of whale products taken in violation of the convention, report data, conduct scientific research, promote conservation efforts, and manage aboriginal subsistence whaling hunts by U.S. native groups. Under the WCA, the PSP contributes marine mammal expertise to the International Whaling Commission.

Fur Seal Act (FSA)

The Fur Seal Act of 1966 contains provisions that affect several functions of NOAA such as the administration of the Pribilof Islands and regulation of the take of fur seals. The provisions of this act related to PSP prohibit the taking of fur seals and provides an exception for Alaska Natives to harvest northern fur seals for subsistence purposes. NOAA authorizes the subsistence harvest of fur seals in Alaska through regulations promulgated under the Fur Seal Act and the MMPA.

TREATIES/ AGREEMENTS:**International Convention for the Regulation of Whaling, 1946 (ICRW)**

The United States is a signatory to the ICRW of 1946. This convention was put in place to “establish a system of international regulation and for the whale fisheries, to ensure proper and effective conservation and development of whale stocks” and “provide for the proper conservation of whale stocks and thus make possible the orderly development of the whaling industry”. This treaty requires contracting governments to comply with the requirements of the Schedule, which include provisions for whaling quotas, scientific research, data reporting, aboriginal subsistence whaling, and conservation efforts.

Convention on International Trade in Endangered Species of Fauna and Flora (CITES):

Section 8 of the Endangered Species Act is the legislative Authority for the implementation of CITES. Many species for which NOAA Fisheries has regulatory authority are listed in the CITES Appendices. These include: all great whales (species subject to management by the International Whaling Commission); all marine turtles; six fur seal species; coelacanths; all dolphins; basking sharks; whale sharks; all sturgeon species; queen conch; all giant clam species; seahorses; all stony coral species; and all antipatharian (black coral) species. PSP provides expertise to the U.S. Fish and Wildlife Service to implement the treaty for marine species for which we have jurisdiction.

Convention for the Protection and Development of the Marine Environment of the Wider Caribbean Region (Cartagena Convention)/Protocol on Specially Protected Areas and Wildlife (SPA):

The Cartagena Convention is a framework convention. It includes Protocols for Oil Spill Response, Land-Based Sources of Pollution and Specially Protected Areas and Wildlife. The objective of the SPAW Protocol is to protect rare and fragile ecosystems and habitats, thereby protecting the endangered and threatened species residing therein. Countries establish protected areas within their jurisdictions. The SPAW Protocol also maintains annexes of species of marine and coastal flora and fauna that (1) require special protective measures or, (2) may be utilized on a sustainable basis but require the cooperative measures of countries in the region. The ESA, the MMPA and other U.S. statutes provide the legislative authority for the implementation of the SPAW Protocol.

Inter-American Convention for the Protection and Conservation of Sea Turtles (IAC)

The objective of the IAC is to "promote the protection, conservation and recovery of sea turtle populations and of the habitats on which they depend, based on the best available scientific evidence, taking into account the environmental, socioeconomic and cultural characteristics of the Parties." The IAC requires that the Secretary consider measures such as (1) requiring assessments of the environmental impact of marine and coastal development activities that may affect sea turtle habitats; (2) establishing protected areas and take other measures to regulate the use of areas where sea turtles nest or regularly occur, including permanent or temporary closures, modification of fishing gear, and, to the greatest extent practicable, restrictions on vessel traffic; and (3) requiring shrimp trawl vessels subject to its jurisdiction to use recommended turtle excluder devices that are properly installed and functional.

POLICIES:

The PSP implements several policies related to the recovery and conservation of species, a few relevant to the program include:

Policy for Evaluation of Conservation Efforts (PECE):

Before making a final determination to list a species as threatened or endangered under the Endangered Species Act, the Secretary is required to take into account State and local conservation efforts to protect the species. The Policy for the Evaluation of Conservation Efforts (PECE) provides guidance on how to evaluate conservation efforts when making the listing decisions. Under PECE, in order to determine that a conservation effort contributes to making listing a species as threatened or endangered unnecessary, or contributes to forming a basis for listing as threatened rather than endangered, the Secretary must find that the conservation effort is sufficiently certain to be implemented and effective. For example, the Secretary must find that all laws and regulations necessary to implement the conservation effort are in place and that the parties that will implement the conservation effort provide a high level of certainty that they will obtain the necessary funding. Criteria include identification of explicit objectives and dates for achieving them, steps necessary to implement the conservation effort, parameters to be used to demonstrate achievement of objectives, and standards for the parameters by which progress will be measured.

Administration and Departmental policy related to Native Americans and the joint Secretarial Order on Federal-Tribal trust responsibilities under the ESA:

In accordance with the 1997 Joint Secretarial Order (Departments of the Interior and Commerce) on American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act (Order #3206), the Secretary shall (1) work directly with Indian Tribes on a government-to-government basis to promote healthy ecosystems (in particular recognize the unique and distinctive political and constitutionally based relationship that exists between the United States and each Indian tribe, and view tribal governments as sovereign entities with authority and responsibility for the health and welfare of ecosystems on Indian lands); (2) recognize that Indian lands are not subject to the same controls as federal public lands; (3) assist Indian tribes in developing and expanding tribal programs so that healthy ecosystems are promoted and conservation restrictions are unnecessary (in particular, take affirmative steps to assist Indian tribes in developing and expanding tribal programs that promote healthy ecosystems, and give deference to tribal conservation and management plans for tribal trust resources that govern activities on Indian lands and tribally-owned fee lands, and address the conservation needs of listed species); (4) be sensitive to Indian culture, religion and spirituality; and (5) make available to Indian tribes information related to tribal trust resources and Indian lands, and, to facilitate the mutual exchange of information, and strive to protect sensitive tribal information from disclosure.

Regulatory Streamlining Plan (RSP)

The RSP requires that NEPA be used as the framework for regulatory streamlining, including coordination under the ESA and other statutory analyses and legal review. Coordination under the ESA must occur early and be ongoing, and must occur among Regional and HQ staff along with "applicants." Quality assurance/quality control systems are being set up to

provide guidance and feedback to ensure the agency fulfills its obligations. Funding, staffing, training, and information systems will be targeted to ensure adequate resources and tools are present at all Regions, Science Centers, and HQ to implement RSP.

DETAILED MISSION REQUIREMENTS DERIVED FROM THE REQUIREMENT DRIVERS**Endangered Species Act:**

Section 2 -

Section 4-

*(a) The Secretary **shall** determine whether species should be designated as threatened or endangered.*

*(b) The Secretary **shall** designate critical habitat for endangered or threatened species (if prudent and determinable), and from time to time revise such designations.*

*(c) The Secretary **shall** respond to petitions to list and designate critical habitat within 90 days, make a preliminary decision on the petitioned action within 12 months, and make a final decision within 12 months of the preliminary decision.*

*(d) The Secretary **shall** conduct a review of all listed species every 5 years*

*(e) For threatened species, the Secretary **shall** issue protective regulations under section 4 (d).*

*(f) The Secretary **shall** develop recovery plans.*

*(g) The Secretary **shall** report every two years to Congress on the status of efforts to develop and implement recovery plans.*

*(h) The Secretary **shall** implement a system to monitor for five years, the status of all species which have recovered and been removed from the list.*

*(i) The Secretary **shall** publish guidelines for the implementation of section 4*

Section 6-

*(a) The secretary **shall** cooperate with States on the implementation of the ESA*

(b) The Secretary may enter into management agreements with States

*(c) The Secretary is authorized to enter into cooperative agreements with states, and **must** make a determination within 120 days of receiving a proposed program from a state.*

(d) The Secretary is authorized to provide financial assistance to any state with a cooperative agreement.

(e) The Secretary is authorized to promulgate regulations to implement section 6

Section 7 –

- (a) The Secretary, and all other Federal agencies **shall** utilize their programs and authorities in furtherance of the provisions of the ESA, by carrying out programs for the conservation of endangered and threatened species.*
- (b) The Secretary **shall** assist federal agencies through consultation, in ensuring that actions they permit, fund, or carry out do not jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of critical habitat.*
- (c) Consultation **shall** be concluded within 90 days, unless agreed to by the action agency and/or permit applicant as appropriate.*
- (d) The Secretary **shall** promptly provide the Federal agency and the applicant a biological opinion upon completion of consultation.*

Section 8 –

- (a) – The Secretary, through the Secretary of State **shall** encourage: foreign countries to provide for species conservation; the entering into of bi-lateral and multi-lateral agreements, foreign persons to carry out conservation actions.*
- (b) The Secretary may assign, or make available, personnel for the purposes of cooperating with foreign countries and international organizations.*
- (c) The Secretary may conduct or provide financial assistance for training of foreign personnel on fish, wildlife or plant management, research, or law enforcement, and render professional assistance in such matters.*
- (d) The Secretary may conduct International law enforcement.*

Section 9 –

- (a) The Secretary **shall** prescribe regulations to carry out section 9 of the ESA.*

Section 10 –

- (a) The Secretary may permit activities for scientific purposes, or to enhance survival of the species.*
- (b) The Secretary may permit taking of ESA listed species if the taking is incidental to, the carrying out of an otherwise lawful activity.*
- (c) The Secretary **must** review conservation plans submitted by permit applicants.*
- (d) The Secretary may grant exemptions to the permit requirements.*
- (e) The Secretary may authorize the release of experimental populations, and **must***

promulgate regulations identifying the population and make determination on whether or not the population is essential to the continued existence of the listed species.

Section 11 –

- (a) The Secretary **shall** enforce the provisions of the ESA.*
- (b) The Secretary may promulgate regulations necessary to enforce the ESA.*

Marine Mammal Protection Act:

Title I

Section 101

- (a) A moratorium on taking marine mammals is established.*
- (b) The Secretary is authorized and directed, in consultation with the Marine Mammal Commission, to determine when, to what extent (if at all), and by what means it is compatible with the MMPA to waive the moratorium.*
- (c) The Secretary **shall** publish a list of guidelines for use in safely deterring marine mammals (for deterring marine mammals protected under the Endangered Species Act, the Secretary **shall** recommend specific measures that may be used to non-lethally deter marine mammals)*
- (d) Upon request by citizens of the United States, the Secretary **shall** allow the taking of marine mammals to specified activities (other than commercial fishing) provided certain findings and determinations can be made.*
- (e) The Secretary **shall** allow the taking of threatened or endangered marine mammals incidental to commercial fishing (working in concert with MMPA section 118) provided certain findings and determinations are made.*
- (f) The Secretary may limit the taking of depleted marine mammals by Alaska Natives for subsistence or handicraft purposes after a formal process.*

Section 103

- (a) The Secretary **shall** prescribe regulations with respect to the taking and importing of marine mammals, as he deems necessary and appropriate, through procedures offering opportunity for a formal hearing on the record.*
- (b) Any regulation prescribed **shall** be periodically reviewed*
- (c) The Secretary **shall** report to the Congress and public every 12 months on the status of all marine mammal stocks.*

Section 104

- (a) The Secretary may issue and revoke permits that authorize the taking or importing of any marine mammal*
- (b) The Secretary **shall** establish and maintain an inventory of all marine mammals possessed pursuant to permits issued.*
- (c) The Secretary **shall** prescribe procedures for issuance of permits*

Section 107

- (a) The Secretary **shall** enforce the provisions of the MMPA.*

Section 108

- (a) The Secretary **shall** initiate negotiations of bilateral and multinational agreements with other nations for the protection and conservation of all marine mammals*
- (b) The Secretary **shall** initiate negotiations with foreign governments engaged in the commercial fishing operations found to be unduly harmful to marine mammals.*

Section 109

- (a) Preempts state laws and regulations related to marine mammals and requires the Secretary, upon request, to transfer management authority to states provided certain findings and determinations can be met – through a formal process.*
- (b) The Secretary may grant and revoke state management authority of marine mammals under certain conditions.*
- (c) The Secretary may make grants to States to assist in developing and administering programs for the conservation and management of marine mammals*
- (d) Nothing in the MMPA **shall** prevent a Federal, state, or local government official from taking marine mammals as a course of duty for certain reasons.*
- (e) The Secretary may prescribe regulations requiring the marking, tagging, and reporting of marine mammals taken by Alaska Natives for subsistence and handicraft purposes.*

Section 110

- (a) The Secretary is authorized to make grants for the purposes of undertaking research in subjects relevant to the protection and conservation of marine mammals.*

Section 111

- (a) The Secretary is authorized and directed to undertake a research program for the purposes of devising improved fishing methods and gear so as to reduce the incidental taking of marine mammals in connection with fishing.*
- (b) Agents of the Secretary may board commercial fishing vessels for the purposes of*

observation and research

(c) The Secretary and Secretary of State are directed to negotiate within the Inter-American Tropical Tuna Commission to effect compliance with regulatory provisions of the MMPA to reduce the incidental taking of marine mammals.

Section 112

*(a) The Secretary **shall** prescribe regulations necessary for carrying out the MMPA*

(b) The Secretary may develop conservation and management measure to alleviate habitat impacts on strategic stocks

Section 114 – expired and replaced by section 118

*(a) The Secretary **shall** annually publish a list of fisheries, and the number of marine mammals and vessels or persons involved in each fishery.*

*(b) The Secretary **shall** establish a program to register fishing vessels and verify information obtained on fishery registrations.*

Section 115

(a) The Secretary may designate marine mammals as depleted

*(b) The Secretary **shall** review and respond to petition from the public to designate marine mammal population stocks as depleted.*

*(c) The Secretary **shall** prepare conservation plans for any marine mammal designated as deplete, unless it is determined that it will not promote the conservation of the species or stock.*

*(d) The Secretary **shall** act expeditiously to implement each conservation plan.*

Uncodified section of the MMPA

*The Secretary **must** implement a program for labeling of tuna captured in the Eastern Tropical Pacific by a purse seine nets as “Dolphin safe” and **must** implement a program verify and track tuna labeled as “Dolphin safe”.*

Section 117

*(a) The Secretary **must** develop, and review annually or at a three year interval (depending on the status of the affected stock of marine mammals, stock assessments for all marine mammal stocks*

*(b) The Secretary **must** revise stock assessment reports, through notice-and-comment procedures, if certain conditions are met during the review.*

*(c) The Secretary **shall** establish and maintain regional scientific review groups*

Section 118

(a) *Incidental mortality of marine mammals as a result of commercial fishing operations **shall** be reduced to an insignificant level by April 30, 2001*

(b) *The Secretary **shall** publish a list of the classification of commercial fisheries by the level of incidental mortality of marine mammals.*

(c) *The Secretary **shall** register fishing vessels that may incidentally take marine mammals in fisheries and may charge a fee for the registration process.*

(d) *The Secretary **shall** establish a program to monitor incidental mortality and serious injury of marine mammals during the course of commercial fishing operations*

(e) *The Secretary may place observers on vessels as part of the monitoring program*

(f) *The Secretary may establish an alternative to the fishery observer program*

(g) *The Secretary **shall** develop and implement take reduction plans for strategic stocks*

*1. A take reduction plan **shall** include: a review of information in the final stock assessment, an estimate of the total number, age and gender of animals that are being incidentally taken, recommended regulatory or voluntary measures to reduce incidental mortality, and recommended dates for achieving specific objectives.*

(h) *When a decision to develop a take reduction plan is made, the Secretary may establish a take reduction team.*

(i) *The Secretary may promulgate regulations when necessary to implement a take reduction plan.*

(j) *The Secretary may promulgate emergency regulations to reduce incidental mortality of marine mammals, but must first consult with appropriate parties.*

(k) *The Secretary **shall** provide assistance to the Regional Fishery Management Councils, States, interstate fish commissions, and Indian tribal organizations for purposes of reducing marine mammal mortality.*

Section 119

(a) *The Secretary may enter into cooperative agreements with Alaska Native organizations to conserve marine mammals and provide co-management of subsistence use by Alaska Natives.*

(b) *Co-management agreements may include grants*

Section 120

(a) *The Secretary may permit the intentional lethal taking of pinnipeds.*

Title II – Marine Mammal Commission – no program requirements

Title IV – Marine Mammal Health and Stranding Response Program

- (a) The Secretary **shall** establish a Marine Mammal Health and Stranding Response Program*
- (b) The Secretary **shall** develop objective criteria to provide guidance to determine at what point a rehabilitated marine mammal is releasable in the wild.*
- (c) The Secretary **shall** collect information on procedures and practices, appropriate scientific literature, strandings, and other life history information, and this information **must** be made available to the stranding network and other qualified scientists. .*
- (d) The Secretary may enter into and periodically review stranding response agreements*
- (e) The Secretary **shall** establish an Unusual Mortality Event working group*
- (f) The Secretary **shall** issue a contingency plan for responding to any unusual mortality event.*
- (g) The Secretary **shall** designate onsite coordinators for an unusual mortality event*
- (h) The Secretary may accept donations to the marine mammal unusual mortality fund*
- (i) The Secretary **shall** make provisions for the storage, preparation, examination, and archiving of marine mammal tissues.*
- (j) The Secretary **shall** issue guidance for marine mammal tissue collection, preparation, archiving, and quality control.*
- (k) The Secretary **shall** maintain a central database which provides an effective means for tracking and accessing data on marine mammals, including relevant data on marine mammal tissues.*